

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stuart, Morris, and Boldt, Chair, present.

9:45 A.M.

PROCLAMATION

Commissioner Boldt read a proclamation declaring the month of April 2006 as National Child Abuse Awareness and Prevention Month in Clark County.

Representatives from YWCA, as well as a CASA Volunteer, accepted the proclamation and made brief statements.

PROCLAMATION

Commissioner Stuart read a proclamation declaring the month of April 2006 as Public Health Month in Clark County.

Marni Storey, Clark County Health Department, accepted the proclamation and said a few words.

10:00 A.M.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

BID AWARD 2440

Reconvened a public hearing for Bid Award 2440 – Crack Sealing Machine. Mike Westerman, General Services, read a memo recommending that Bid 2440, including trade-in, be awarded to the lowest responsive bidder.

Boldt asked if the specs were clear.

Westerman said yes and that the low bidder had, in fact, called the Purchasing Department in regards to the compressor and still failed to include it.

There being no public comment, **MOVED** by Stuart to award Bid 2440 to Crafcro, Inc. of Chandler, Arizona, in the total bid amount of \$50,862.98, including Washington State sales tax,

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

and grant authority to the County Administrator to sign all bid-related contracts. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 261)

BID AWARD CRP 321222

Reconvened a public hearing for Bid Award CRP 321222 – Betts Bridge 26 Replacement (Salmon Creek Avenue). Mike Westerman, General Services, read a memo stating that Purchasing, Public Works, and the Prosecuting Attorney had received and reviewed a bid protest submitted by Cascade Bridge, contending that the low bidder (Tapani Underground, Inc.) should be considered non-responsive for failure to provide required signatures. Staff reviewed the protest and considers the issue a minor informality that may be waived as an immaterial irregularity that does not give the bidder an unfair advantage. Therefore, Purchasing and Public Works recommended that Bid CRP 321222 be awarded to the lowest responsive bidder.

Stuart wanted to know if there had been discussion with legal council to make sure we were within our rights under the law to award the bid.

Westerman said yes.

Chris Horne, Prosecuting Attorney's Office, said the issue of not signing a bid has been addressed by the Court of Appeals, which held that it was a material issue and resulting in the rejection of a bid. Later, the Supreme Court came to a contrary conclusion. *Horne* said the difficulty in this case was that the language in the proposal is a bit different, but they believed overall that the Supreme Court would continue to adhere to its prior holding. For the same issue there was no signature on the list of subcontractors. He said that's not an issue that's been addressed, but they thought the Supreme Court would rule that the bid bond and the promise by the contractor—which was signed and is incorporated into the agreement and the agreement incorporates the bid bond—would be ruled to be a completed document and, therefore, one that contains only immaterial irregularities. He said it does cause them some concern that they failed to sign, they feel that ultimately a court would come to a similar conclusion.

Stuart asked if they were fully covered in the event there was a cost overrun or any sort of problem with the bid.

Horne said the bid bond ensures that the bidder executes the agreement and they are locked into the price, and a performance bond is required separately to ensure that they construct at the price bid.

Morris noted that Tapani Underground does too much work in the public sector to overlook a signature. She said her concern was that they would be held to their end of the agreement

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

having failed to sign, and the issue of whether or not they are responsible hasn't been tested in court.

Horne said they invited council from both sides to provide argument to the county by the previous Friday and they reviewed the arguments of both cases to try and come to a resolution. He said the court ruled that where multiple documents form an agreement you can use the signature on one to remedy the deficiency on the other.

Stuart wanted to know if they had assurances from Tapani that they would fulfill their obligations under the contract.

Horne stated that the bid bond ensures they sign the contract, the contract requires them to perform the work for the amount they bid, and the performance bond ensures that they construct at the bid amount.

Kevin Gray, Department of Public Works, said he had discussions with Tapani. He stated that this was an unfortunate instance, but it was an oversight and he believed the bid bond form provided by Tapani, which they did sign, provides that binding agreement.

Boldt asked if they were taking steps to improve the forms.

Westerman said they have readjusted the form, which now clearly states that it's a "Signature Proposal Form" and includes a disclaimer that "failure to sign the form would result in rejection of the proposal."

Bill Barron, County Administrator, suggested it would be appropriate for the Purchasing Department to send a letter to all vendors reminding them about the importance of the form and attention to detail.

[Public testimony opened.]

Jeremy T. Vermilyea, Attorney, Jordan Schrader Law Firm, stated that he was representing Cascade Bridge, the apparent second-low bidder on this project. Mr. Vermilyea said there were two omissions in the bid submitted by Tapani: the lack of signature on both the proposal form and subcontractor list form. He said there are WSDOT standard specifications for road, bridge, and municipal construction that apply to this project and they specifically address both issues. He read from the WSDOT standard specs for 2004, Section 1-2.13, Sub.1, Sections F and G pertaining to proper execution of the form and subcontractor list. Mr. Vermilyea said the specifications that apply to this project made it clear that either of the omissions in this instance would result in rejection of the bid. Vermilyea disagreed with Mr. Horne that the existence of the bid bond protects Tapani with respect to the subcontractor list. He said the bid bond is

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

there to assure that if the bidder fails to sign a contract at the price for which they offered, then the surety would make up the difference between that bidder and the next low bidder. That doesn't address the question as to whether they properly completed the subcontractor list and he didn't think you could make the argument that the surety is responsible for their failure to properly complete the subcontractor list form. He stated that under either one of those scenarios, Tapani should be rejected as non-responsive and that the project should be awarded to Cascade Bridge.

Joe Yazbeck, Yazbeck Cloran & Hanson, Council for Tapani Underground, Inc., stated that Shane Tapani signed the bid form in the place where he had to acknowledge the addendum, but failed to sign in the general signature block; the bid form was signed and that makes a big difference. Also, the bid bond form was signed. The subcontractor form was handwritten and unfortunately was not signed, but the requirement of the WSDOT specification is that it has to be filled out with the subcontractors that you plan to use, which Tapani did. Mr. Yazbeck said that in light of the fact that the subcontractor form was filled out in handwriting, it shows a clear intent to be bound to use that subcontractor and is clearly waivable. He added that Tapani has shown time and again that it can and will perform for the county.

Morris noted that all of the bids were well over the engineer's estimate and she asked if there was something wrong with the estimates.

Gray said they had WSDOT engineers prepare this estimate in the hopes they could better predict where the prices of concrete and steel were going and, unfortunately, those prices are going up beyond everyone's expectation. He said they also consulted with local programs who administer the bridge replacement program and this spring they are seeing this across the board statewide. In their consultations with the state, they feel the bids received on this project are reflective of the economy. The estimates, which they adjusted up, were not adjusted high enough. He said local programs did come through with additional funding to help cover the difference.

Morris inquired about the lapse in time between completion of the engineer's estimate and the submission of bids.

Gray said it was three weeks.

Morris noted that the potential winning bid is an additional million over the engineer's estimate of \$2.2 million—about 40% over in three weeks.

Gray pointed out that the engineer's estimate did not include the utility work, which was an additional amount of about \$600,000.

Morris asked what the difference was in the bottom line.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Gray said it was \$700,000 overall.

Morris wanted to know why they didn't include the utility work in the estimate.

Stuart referenced the first page of the specifications and the line for superstructure for Betts Bridge Replacement. He noted that the engineer's estimate is \$350,000, while Tapani's is \$600,000 and Cascade Bridge's is \$840,000. He wondered why there was such a big jump between the engineer's estimate and the actual bids.

Gray responded to Commissioner *Morris*' question and clarified that the overall engineer's estimate, including all additives, was \$3,002,000 and the apparent low bid was \$3,668,000.

Morris said that's 20%, which is still a lot.

Gray agreed. He said that regarding the superstructure, they are seeing incredible jumps in the price of steel, concrete aggregates and structure.

Stuart asked if there was something they could be doing with the DOT engineer's to work with the private sector to figure out what a more reasonable estimate would be, given the situation they're facing.

Gray said that industry-wise they've been seeing the increase in prices at an incredible rate. As far as a lapse in time, they didn't expect the increase to continue at that rate, but unfortunately that was the case.

Morris said the issue here was the forecasting and staff must get better.

Gray agreed. He pointed out that historically they have been very good at their forecasts. In this case they are catching up to the prices and they would do a better job of it.

Stuart said it was good that they were able to capture state money to be able to make up the difference. He said in the future it would be helpful for the board to receive updates throughout the process.

Gray said they would be updating their construction program throughout.

Boldt asked if when bids come in over the estimate staff did a review.

Gray said yes, they review and adjust the numbers they would use for subsequent projects, and look program-wide at what they're seeing, as well as consult with other agencies in the industry.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Boldt wanted to know if Mr. Horne wanted to comment in response to legal council for Cascade Bridge and Tapani Underground.

Horne said one of the things he discussed with council was whether or not the language in the standard specifications was the same today as it was when the Supreme Court decision was decided because if it was then this probably was something that was before the court that they found was not determinative of the issue. Horne further explained. He said the board is not required to reject it and they have the discretion to award as an immaterial irregularity or they have the authority to reject it as an immaterial irregularity.

Morris asked if the subcontractor list was the only part Tapani Underground handwrote.

Yasbeck responded that the entire proposal bid bond page was handwritten, as well as the subcontractor list.

Morris asked if someone other than Shane Tapani had written it.

Yasbeck said yes and in the rush to get the bid in, Mr. Tapani missed the signature blocks.

Stuart said that he felt it was in the best interest of the county to award the bid to Tapani Underground and then have follow-up with discussions on how they move forward with the bid process, as well as draft a letter per Mr. Barron's suggestion to send to vendors ensuring they understand that details are very important.

There being no further comment, **MOVED** by Stuart to award Bid CRP 321222 to Tapani Underground, Inc., of Battle Ground, Washington, in the total bid amount of \$3,668,280.27, and grant authority to the County Administrator to sign all bid-related contracts.

Boldt said he thought there was enough to hold Tapani with the subcontractors and especially with the bond for that.

Morris commented that Tapani Underground has been doing this for a long time and should know better. She said if it was an oversight, then it reflects sloppy workmanship and she would be voting no.

Commissioners Boldt and Stuart voted aye. Commissioner Morris voted nay. Motion carried.
(See Tape 261)

PUBLIC COMMENT

There was no public comment.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

[Commissioner Boldt requested that the hearing regarding Fireworks be moved up on the agenda.]

CONSENT AGENDA

Stuart commented on item 6 (resolution for the Clark County Regional Trail and Bikeway Systems Plan for 2006), stating that its great work and he looked forward to seeing the final product.

There being no public comment, **MOVED** by *Stuart* to approve items 1 through 12. Commissioners Boldt, *Stuart*, and *Morris* voted aye. Motion carried. (See Tape 262)

PUBLIC HEARING: FIREWORKS

Held a public hearing to consider modifications to chapter 5.28 of the Clark County Code (Sale of Fireworks) for the purposes of including updates based on changes in state law, to eliminate unnecessary language, and to consider allowing a maximum of six retail sales permits to be held by the organization which funds the community-wide Fourth of July fireworks display at the Historic Reserve.

Jon Dunaway, Fire Marshal, Department of Community Development, presented an overview of the proposed ordinance changes. He said there are two sets of issues, one being that Clark County Code has not kept pace with state law changes such as regulation of the dates for which fireworks can be sold and used. He said currently county code allows for sale and use that exceeds the limits that have been imposed by the state. As a minimum, the county cannot be less restrictive than the state in that regard. In addition, he said there were some prior code changes made to 5.28 that have produced language in the ordinance that is no longer necessary. The proposal recommends that this unnecessary language be removed to make the ordinance as clear and concise as possible. There's also a proposed code language being introduced that provides for a public education piece regarding the sale of fireworks locations, informing consumers via signage at each sale location of the legal dates where fireworks are able to be used. He said this is in an effort to curb some of the after-curfew fireworks complaints they have been receiving over the past few years. *Dunaway* said the second issue the modifications deal with is the permitting and management practices of the Fourth of July Committee. He explained that this group of permit holders has been operating for many years to support the annual fireworks display that occurs at the Historic Reserve each year. The manner in which the committee has been permitting and managing the sales locations has been in violation of county code, and there are multiple permits and stands that are managed by a single organization. Clark County Code is clear that the holders of permits are able to manage only one stand per person or organization. The proposed change would address this issue by allowing a maximum of six permits to be reserved for use by this committee, while at the same time preserving the funding

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

for the event. Dunaway pointed out in the staff report a reference to the Fourth of July Committee to the Vancouver Historic Reserve and clarified that the committee is a separate entity and not a branch of the Historic Reserve.

Boldt asked if 6 permits was a maximum number.

Dunaway said 6 is the maximum number and they wouldn't be required to have that number, and that the source of those 6 should first be examined from within the organizations that have historically taken part in this committee. If those were not able to attain a level of 6 from those permits, then they would examine the 2 available for lottery in 2006 as being contributed to that group.

Boldt wanted to know when it would occur if they go with the lottery.

Dunaway said it should have happened already, but hasn't because a decision [on the proposed ordinance] has yet to be made.

Stuart said in terms of the Historic Trust and the 6 permits, he wanted to know how many last year were actually working with the Vancouver Historic Trust.

Dunaway said there were 6 permits total contributing to the Historic Reserve and the display.

Stuart said if a permit holder decides they don't want to work with the Historic Reserve and want to go on their own and keep the money for themselves, their permit has historically been tied to their contribution to the Historic Reserve. He said he was concerned that if people jump ship from the Historic Reserve, they would have a competitive advantage to those who would have to go through a lottery process for the non-Historic Reserve permits. He said he was trying to figure out if it would make sense to allow someone to keep the permit even though it was a permit that was a set aside for the Historic Reserve, or whether they should have to go back into the lottery like other permit hopefuls who don't want to help out with the Historic Reserve. He said he needed clarification.

Dunaway said the recommendation would be that current permit holders have the choice if they wish to retain their license or become part of the block of 6 that would financially help support the fireworks display. Should they choose not to partake in that block of 6, they would retain the license. The block of 6 would then have to make up in some other matter, which would potentially include the 2 that are up for lottery in 2006.

Morris asked why someone would enter the lottery if they believed they would have to give their profits to the Historic Reserve.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Dunaway said that if they chose to go that route they would not hold a lottery. They would not be awarded to a person and that person be forced to partake within the block of 6.

Morris said she didn't think they had that latitude under the code change.

Dunaway said it's not stipulated in the language of the ordinance.

Horne said that Commissioner Morris was correct in that 5.28.060 refers to who can hold a permit and the numbers and that separate chapters can hold one, and it goes on to say, "...that except a maximum of six permits are reserved for the firm, organization, or corporation that uses the profits for the fireworks stands," and it talks about the excess going to a lottery. *Horne* said the question that's posed is that before you get to the lottery, you go to the existing permits and those permits allocated to the entity—in this case the Historic Reserve—that put on the fireworks show before you get to the lottery. He said they have a past practice over the past 10-20 years that the board has allowed existing permit holders to not take part in the lottery. In the addition to that group of number, it was the intent to authorize 6 permits to this fireworks stand—or if the board approved it, that's what would occur—and any remainder would go to this lottery. The reservation of 6 would be determined before they would ever determine there was an excess and before there was ever an issue of a lottery. He said they can clarify that in the ordinance before adoption.

Morris said that's distinctly different than what's before them. Essentially it creates a cycle whereby someone may each year decide that they are going to get a Reserve license and the next year they decide they are not and the new ones, if there are new ones, automatically have to go to the Reserve. In the end, the Reserve isn't guaranteed 6. They're guaranteed some, depending on population growth.

Stuart said his concern was that he didn't see any language that would prevent a permit holder or seeker to get the permit saying they are going to give their money to the Reserve and then the following year they say that they're out and aren't giving their money to the Reserve. All they have to do is give one year's worth of their profits and from then on they're free to do what they want. *Stuart* said his concern is about people being able to jump ship and then keep their permits as if they had gone through the lottery.

Morris said the fundamental policy question for the board was whether or not they intended to guarantee the Historic Reserve Trust operators. The way the language is currently written, they do not intend to reserve them operators, but that's what the Reserve wants so the fundamental policy question is did they want to guarantee the Historic Reserve stands with operators or did they just want to reserve licenses for them? She said she was more than happy to reserve 6 licenses for the Trust and there was a number of approaches they could take, for example they could say that not only would we reserve 6, but would guarantee 3, etc.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

[Discussion continued.]

Morris wanted to know how many county licenses altogether they would be issuing this year.

Dunaway said that for 2006 there will be 37.

Morris asked Mr. Horne if there was anything that would prevent the Historic Reserve from simply operating the stands on their own.

Horne said the Reserve could do that and, in fact, he thought that's what they would do.

Elson Strahan, President, National Historic Reserve Trust, thanked Mr. Dunaway and the Board for considering the proposed ordinance, which would provide a financial stream for benefit of the county's largest single-day event. He said the position they find themselves in now is a result of many years of good intentions and dedicated community members that morphed into a system that doesn't align with current county code. Thus, they have citizen and organizational intent and the code needs to be clarified. Mr. Strahan expressed support for the proposed changes. He noted that the language was encouraged by the Trust because if the intent of the commissioners is to provide a means of support for this major county event, the mechanism to do that—or vesting licenses in support of the event—should not vest them in support of the organization per se. He further explained. He said if the Trust decides not to produce the event, or someone else steps forward to do it, then the Trust should not, as a non-profit corporation, retain the benefit to operate under those 6 licenses and it should pass to the next organization. He clarified that the Fourth of July Committee was a creation 40+ years ago of a group of organizations that came together to benefit the event; however, the Trust is not part of that committee. Strahan said that in regards to the question about manage versus the vesting in terms of the organizational name, the fact is that if they choose to vest or create or reserve 6 licenses, they are providing an opportunity to have 6 stands operated under the auspices of the organization that is producing the event at the Historic Reserve. He said that requires them to partner with a variety of organizations and sometimes you find 2 or 3 different organizations in one stand location that supply volunteers in exchange for some of the support going to provide financial benefit to their organization and that would continue. The issue is that they would not be vesting the license in each of those organization names, but just putting it under the umbrella and that would require the Trust to put together the organization or have that done so the stands would operate with primary benefit going to help support the Reserve. He further explained. He clarified that there are currently 3 organizational licenses that have been issued in separate names that are agreeable to come under the general reservation of 6. He said if the county opts to set aside the 2 lottery licenses, then that would create 5.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Stuart said if the operators that Strahan indicated they were working with decided not to come back, they wouldn't have 6. He said the language doesn't say they are reserved 6, it says "except that a maximum of 6...", which means they could have zero. He said he was troubled by the language and he was unsure why Mr. Strahan was supportive of it.

Strahan said in this case the vesting was in the organization producing the event so if a group were to step forward and say they were going to help run a stand and they in turn get some remuneration, they could come back and say that they cannot get any volunteers to help out the next year. He said they would have to seek someone else to assist in the process. The license would remain with the Trust, or producing organization.

Stuart said that's not clear from the ordinance.

Morris stated that as she understands it, 6 licenses are reserved for support of the fireworks display irrespective of the organization responsible for operating them. That means that if no one wants to help that, there are still only 31 licenses available because 6 are reserved for the fireworks support, whether they are using them or not.

Boldt added that it's "up to 6."

[Discussion continued.]

Morris stated that she wants to support the Fourth of July display and do it in the fairest way possible.

Boldt wanted to know if they could designate the 2 lottery spots to the new name, and then the Trust would have 5. From then on, the Trust would have the opportunity to go for that 6th spot.

[Discussion continued.]

Horne said the intent of allocating them or putting them into trust on behalf of the entity putting on the Fourth was that you couldn't have that happen in the future. In the future they would be "in the name of" or "on behalf of" the Fourth of July event. He further explained.

Stuart said his question was whether or not the 3 that Mr. Strahan referred to could opt out this year on the basis that they no longer want to be a part of it; however they could keep their licenses.

Horne said that was correct. As the ordinance is currently written, they could opt out. His understanding from Mr. Strahan is that the 3 organizations have agreed to transfer any interest

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

they have on behalf of this trust for the future of the Trust. So they could opt out, but they are waiving that right and are agreeing to be part of the fireworks event.

[Public comment opened.]

Raymond Woodson, Pastor, United Pentecostal Church, Vancouver, stated that they have had a tent for several years. Pastor Woodson said the concerns expressed by Commissioner Stuart are very valid in the sense that it appears that the Historic Reserve is putting themselves in jeopardy by allowing an open-ended opportunity for an in and out involvement with fundraising. He referenced the wording under 5.28.060, #1, which would be additional language, and uses 3-4 words that almost grants or establishes exclusivity of a group that would do what the Reserve is hoping they will do, by using the terms “person”, “firm”, and “corporation” – all singular. He further explained. Pastor Woodson said the more one individual group is involved, the more chances there are for either great success or failure, or mediocrity. He said that was not good business; and the idea of identifying a singular person, firm, or corporation, as the language states, creates an atmosphere of pandering to a specific group, which he opposes because that takes away the competitive edge. He said it appeared to him that selective permits create a competitive advantage. Woodson further commented that he thought the lottery was still the right way and he didn’t have any problem with the Historic Reserve being allocated up to 6 permits as long as those 6 permits weren’t identified with one particular group. He stated that he was opposed to this ordinance as written because it’s too exclusive.

Morris asked Pastor Woodson if he was one of the license holders who work with the Reserve and, if so, did he plan to continue.

Woodson said yes.

Morris asked if the license was currently in his organization’s name.

Woodson said yes.

Morris wanted to know if he was willing to have the name on the license transferred to the National Historic Trust.

Woodson said if that were their focus then it would not be a problem. However, he said that even with the wording they have now, it seems there’s the ability for someone to receive 6 permits and then say adios.

Morris said that cannot happen, but she could understand how he would see that in the language. She asked Mr. Strahan if he would mind if the language were amended to read, “...to

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

the National Historic Reserve Trust” and “...until such time as that responsibility transfers elsewhere.”

Strahan said that would be fine. He said the intent in the language was that the board was supporting a means to funding the event.

Morris said they could add a paragraph, “at such time as the transfer of responsibility for funding the fireworks display moves to a new entity the ordinance would be amended.” She asked Pastor Woodson if it would make him more comfortable if the language on page 3 were to read, “except that a maximum of six permits are reserved for the Historic Reserve Trust for the purpose of supporting the Fireworks Display.”

Woodson said he didn’t have any problem with that terminology. He emphasized that he does have a problem with exclusive rights. He said the Historic Reserve should be given every opportunity necessary to make the fireworks event go, but he doesn’t think they should put all their eggs in one basket.

[Discussion continued.]

Morris said they would need another paragraph that grandfathered in anyone who is currently a participant with the Reserve.

Stuart agreed with the suggestion.

Strahan pointed out that Pastor Woodson is not part of the group that has been affiliated with the show.

Woodson referenced the underlying section where it reads, “...or corporation that uses the profits,” and said that’s an ambiguous term.

Morris said they are giving a monopoly on 6 licenses and that’s why the public policy issue remains. She said the fundamental public policy question is whether this is of sufficient public value and public interest across the county for them to do that.

Novella Nye, Beta Sigma, said the legalese was overwhelming to her. She asked about lumping everything under the same name, which she said was in violation of the current law as it stands today. She said the proposal is to make an exception for the celebration to have one name on 6 locations. Ms. Nye asked if Mr. Strahan was planning to run the 6 locations under their name as the Reserve Trust or under the names of the groups that are already in permit on the location.

Boldt said the new change would be under the Reserve Trust name.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Morris said she didn't believe that would prohibit, for example, the Lyons Club from putting their name on it. The license would be held by the Historic Trust, but the operator of it can have their name there also.

Nye stated that they intend to operate individually away from the Trust, but just felt that some things needed to be clarified. For example, if the Eagles went with the Trust this year then they wouldn't get to go out on their own.

Boldt said they could go on their own if they applied for the lottery.

Barron clarified that there were only three not-for-profits that have made a specific dedication to the Trust.

Jeff Fish, Chairman, Hazel Dell Lyons Club Fireworks Committee, noted that they have not participated or supported directly in providing funds to the Fourth of July Committee, although they support them morally from where they go with their fireworks display. Mr. Fish expressed support with the change regarding the timeframe. Regarding the permit for the Trust, he said they have the same concern as Pastor Woodson as far as competitive advantage. He said he's concerned mostly about the profits. He further explained. Fish wanted to know if his club changed policy and worked out an agreement with the Trust, would that fall under the category of the 6 permits.

Boldt said no, not under the new language.

Curt Carroll said it appears there is a lot of confusion. He said he thought it would be best for the 2006 fireworks season to continue forward and in the order it's been, there's two lottery licenses available. He said it's already April and the lottery was supposed to have been drawn last month. Carroll referenced section 5.28.015, Section 2, where it reads, "those permit holders who do not follow the procedure will forfeit their priority status and the permits will automatically be set aside for a lottery." He then referenced 5.28.060 where it reads, "...there will be the 6 permits for the Reserve." He said no one is questioning the number 6 and he wanted to know how that number was reached. He suggested they not pass the ordinance, clarify lottery or not, and provide explanation about the number 6. Also, Mr. Carroll said the question of transferable licenses needs to be addressed.

Morris asked Mr. Carroll if he held a license.

Carroll said no.

Morris asked if he was in the lottery.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Carroll said his name was in the lottery.

Morris asked Mr. Horne about the issue of transfer of license from a current operator who does want their proceeds to go to the Historic Reserve Trust and putting the name in the Trust.

Horne said the ordinance as currently written prohibits any member from transferring his permits. He said they do have a list of where the original 6 came from and they can name those for later. Also, a simple solution to the concern about the lottery issue would be to insert language into 5.28.015 under #2 where it says, "shall be set aside through the lottery process," adding "...provided that the available permits will first be allocated to satisfy the requirements of 5.28.060.1," which takes you back to the reservation of 6 and then it would satisfy the simplicity and the clarification. While it's not a transfer, it complies with the ordinance and deals with the board's concern over the lottery.

Stuart said he thought they would want something in the language to say, "...if there are any available above and beyond those allocated under 060." He said it seemed they wouldn't want to just go 060.1 and not recognize that there's a maximum.

Bruce Jolly stated that he has been involved with fireworks through the Elks Club, the Masonic body and shrine, and through a local scouting program. He asked the board to look more closely at the ordinance and he believed there were some happy mediums in the ordinance that most operators would be receptive to, but asked that they all get a fair shake and not necessarily focus on one group.

Jonathan Yadon expressed concern with the language in the ordinance. He said he felt the fireworks show should be funded. He wondered why they were changing the funding method from what it's been for so many years to an exclusive 6 permits for a specific organization. He further explained. He also wanted to know if the ordinance had already been decided or if they were re-writing to make it happen versus deciding what has been proposed and whether it's right or wrong.

Boldt noted that this is a hearing process.

Morris said historically the fireworks display has been funded by fireworks sales. She said that essentially the Fourth of July Committee ran all of the stands and the money went to the display. She said it's only been recently that people have been able to have licenses and operate a fireworks stand for profit or whatever other purpose they did it for. She said they are becoming more historical as they move in the direction of this ordinance.

Yadon said he recalled his mother operating a stand back in 1985.

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

[There was discussion regarding the history of fireworks sales.]

Sandy Atkins, Department of Community Development-Fire Marshals Office, said the Fourth of July Committee had about 20 stands and most of the stands were for the fireworks display. There were very few such as Mr. Yadon's mother, who had a permit and had come in on the lottery.

Stuart asked Ms. Atkins if she recalled how many stands total there were back then.

Atkins said she thought there were 25-28, with the majority of the stands for the Fourth of July display.

Morris said she believed there was a split so if someone was operating as a non-profit, then part went to the Committee and they could keep the other part.

Yadon said if the lack of proceeds has dropped in recent years prompting this issue to arise, he wanted to know if it would be better to encourage donations. He wondered what the legal ramifications would be if they went with this ordinance.

Boldt said that this is a medium for the board to express support for a community event and yet be able to have the other side have fireworks in the county. He said there's got to be give and take.

Fish referred back to the history and said the Hazel Dell Lyons Club has had their permit since the mid-60's and it's always been a fundraiser for their club.

Boldt said they obviously have some work to do on the ordinance and wanted to know if they should continue the hearing.

Stuart said they've received some good input and there is some language that would need to be shifted for clarification. He said given they had received a lot of good testimony he suggested they close public testimony, continue the hearing and have further deliberations. He said he was willing to proceed with identifying potential revisions and then bring back the final documentation for discussion.

Morris said she would like to see the number of permits available in the county calculated on a population basis, as they always have; she would like to reserve the 6 licenses for the Historic Reserve Trust and for that to be clarified in the language. If anyone wants to keep their license and allow the arrangement with the Trust to continue, she would like it figured out how they would get to stay if they want, and not get kicked out if the Trust were to find a better operator,

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

but they're not obligated to stay. So they would have 37 licenses and according to the calculation, 6 of those would be held by the Historic Reserve Trust and 31 would be held by other organizations. The two new ones would be in the lottery for anyone who has their name in the lottery to be drawn.

Stuart asked if they have 37 available now or 35, and 2 would be in the lottery.

Dunaway said it was 35 and 2 for the lottery.

Stuart asked Mr. Strahan how many people had attended the previous year's fireworks display.

Strahan said the event traditionally has a count of approximately 60,000 people attending the show.

Stuart said as a public policy issue he saw great benefit of the show. He said for him it would be well worth it to guarantee 6 permits. He agreed with Commissioner in terms of the language stating there's 37 and 6 are for the Trust.

Boldt asked if they could put the language on the web site once it's finalized and suggested they continue the hearing for one week.

[Public testimony closed.]

There being no further comment, **MOVED** by Stuart to close public comment for the Public Hearing regarding amendments to Chapter 5.28 of the Clark County Code (Sale of Fireworks) and to continue deliberations to April 11, 2006, at 10:00 a.m., in the Commissioners' Hearing Room, Public Service Center, 6th Floor. Commissioners Boldt, Stuart, and Morris voted aye.

PUBLIC HEARING: MIXED USE ORDINANCE, MASTER PLANNED DEVELOPMENT
ORDINANCE, AND MIXED USE DESIGN STANDARDS

Held a public hearing to consider the Mixed Use Ordinance, Master Planned Development Ordinance, and Mixed Use Design Standards.

During the last update of the Clark County comprehensive Growth Plan, the Planning Commission and Board of Commissioners conducted hearings regarding the mixed use district. Based on testimony at those hearings, the board decided that further refinement of the mixed use code to include design standards was needed. In September 2004 the Board appointed an 8-member advisory committee to a short-term work program that culminated in the adoption of an interim mixed use code CCC40.230.020 on December 14, 2004. The committee met

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

between September 2004 and January 2006 and developed an enhanced ordinance to regulate mixed use developments, associated design standards and amendments to the master planned development ordinance to include mixed use developments. This hearing was held to consider the proposed ordinances. This hearing was continued from March 14, 2006.

[Public testimony opened.]

Randy Clarno, Senior Partner, CEO, Vision First, Eagle, Idaho, stated that his company has the Austen-Heritage property on 99th Street under contract to develop a mixed use planned community. Mr. Clarno referenced the staff memo to the board, page 3 of 5, item #5, Required Mixed Uses, and stated that his company has 20 communities under development in four states and has done many mixed use developments. He said they have concerns about some of the standards being proposed, the first one under #5 where it talks about the 20% residential/non-residential—which they are fine with because they believe they can make that work—but they are concerned about the 30% requirement. He said the proposed language makes it a minimum of 30% on sites in excess of 50 acres and they feel that they could not support non-residential uses of that size on their site for their location. He proposed maintaining the 20% requirement or have a minimum and maximum – 20% be the minimum and if people need more then they could have more. He suggested they not have 30% as the minimum for sites in excess of 50 acres.

Morris asked Mr. Clarno how many acres he has.

Clarno responded that they have 90 acres – approximately 60 acres is useable. He said 20 acres of non-residential uses at that location couldn't be supported from a market standpoint – it needs to be more like 10 or 12, which the 20% requirement would fulfill.

Morris said she believe the calculations were on net buildable lands—not on the gross

Clarno said that was correct. He said if they had 60 acres of net usable property then that would mean that they would have to have 18 acres of non-residential uses at a 30% minimum. They would fall into that cat of being over 50 acres and have to have 30%, which would be 18 acres of non-re uses at that location.

Morris said they would have 41 acres of 18 units per acre—he didn't think that was enough density to support 18?

Clarno said density was also a concern. He said they felt the board should adopt something more like 12 to 14 units per acre average over the entire site for residential uses. He further explained.

COMMISSIONERS PROCEEDINGS

APRIL 4, 2006

CLARK COUNTY, WASHINGTON

Steve Madsen, Building Industry Association of Clark County, commented. Mr. Madsen said they were given a set of existing mixed uses to look at and asked which ones they liked and didn't like, but he wasn't sure if that was a useful exercise. He said the input he has received from members is that there's not a market for the mixed use development that's envisioned in Appendix D (Design Standards). He said the density is clearly an issue and particularly in the model design standards where it uses the 179th location as an example. He further explained.

Morris asked Mr. Madsen if someone from the BIA had been a part of the task force.

Madsen said Polly Lauser had been involved. He noted that a lot of his own comments were from Ron and Polly Lauser and based on their background in residential home building and real estate in their mind there's no market for these types of developments.

Stuart asked Mr. Madsen if he had talked with the Killian's, who were also members of the task force.

Madsen no.

Stuart noted that the Killian's are doing a mixed use project in downtown Vancouver.

Morris said one way to build a good market would be to put in a good restaurant and dog park.

Unidentified Attorney, asked the board to reject the idea that as sites grow larger that they can also increase the density above 12.

There being no further public comment, **MOVED** by Stuart to continue the public hearing regarding the Mixed Use Ordinance, Master Planned Development Ordinance, and Mixed Use Design Standards to April 11, 2006, at 10:00 a.m., in the Commissioners' Hearing Room, Public Service Center, 6th Floor. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 262)

COMMISSIONER COMMUNICATIONS

There were no communications.

Adjourned

2:00 P.M. PUBLIC BID OPENINGS

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

Present at bid opening: Louise Richards, Board of County Commissioners Office; and Mike Westerman and Allyson Anderson, General Services-Purchasing Department

BID OPENING 2435

Held a public hearing for Bid Opening 2435 – Erickson Farms Park. Mike Westerman, General Services, opened and read bids and stated that it was the Purchasing Department's intention to award Bid 2435 on April 11, 2006 at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 262)

BID OPENING 2436

Held a public hearing for Bid Opening 2436 – Walnut Grove Park. Mike Westerman, General Services, opened and read bids and stated that it was the Purchasing Department's intention to award Bid 2436 on April 11, 2006 at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 263)

COMMISSIONERS PROCEEDINGS
APRIL 4, 2006
CLARK COUNTY, WASHINGTON

BOARD OF COUNTY COMMISSIONERS

Marc Boldt/s/
Marc Boldt, Chair

Steve Stuart, Commissioner

Betty Sue Morris/s/
Betty Sue Morris, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

rt